

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

EMMANUEL MITCHELL,

Plaintiff,

v.

ORDER
01-CV-681

VICTOR HERBERT, Superintendent,

Defendant.

This case was referred to Magistrate Judge Victor E. Bianchini, pursuant to 28 U.S.C. § 636(b)(1). On September 27, 2001, petitioner filed a petition for writ of habeas corpus. On November 20, 2007, Magistrate Judge Bianchini filed a Report and Recommendation, recommending that the petition be dismissed.

Plaintiff filed objections to the Report and Recommendation on February 1, 2008.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions of the parties, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Bianchini's Report and Recommendation, the petition for a writ of habeas corpus is dismissed. The Clerk of Court is directed to take all steps necessary to close the case.

The Court finds that petitioner has failed to make a substantial showing of the denial of a constitutional right and therefore denies his motion for a certificate of appealability. 28 U.S.C. § 2253(c)(2).

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this judgment would not be taken in good faith, and therefore denies leave to appeal *in forma pauperis*. Further requests to proceed on appeal *in forma pauperis* must be filed with the United States Court of Appeals for the Second Circuit in accordance with the requirements of Rule 24 of the Federal Rules of Appellate Procedure.

SO ORDERED.

s/ Richard J. Arcara
HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: February 5, 2008